



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/169287

PRELIMINARY RECITALS

Pursuant to a petition filed October 08, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on November 24, 2015, at Kenosha, Wisconsin.

The issue for determination is correctly determined that the petitioner was overpaid \$2,067.81 in childcare benefits for the period from January 5, 2014 through December 31, 2014, and January 5, 2015 through February 28, 2015, and May 1, 2015 through June 30, 2015 because he was living with his children's mother, which neither he nor the mother reported to the agency.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. The mother of the petitioner's children received childcare assistance from January 1, 2014 through June 30, 2015. She received this childcare assistance as a single adult residing with her children. Neither the petitioner nor the mother reported living together during the overpayment periods.
3. On September 21, 2015 the agency sent the petitioner the following childcare overpayment notices stating:
 - a. He was overpaid \$1,480.84 in childcare benefits from January 5, 2014 to December 31, 2014 under claim number [REDACTED].
 - b. He was overpaid \$224.83 in childcare benefits from January 5, 2015 to February 28, 2015 under claim number [REDACTED].
 - c. He was overpaid \$362.14 in childcare benefits from May 1, 2015 to June 30, 2015 under claim number [REDACTED].
4. All of the above-referenced notices stated that the overpayments were caused by the petitioner and the mother of his children intentionally reporting false information to the agency. In this case the agency alleges that the petitioner was living with his children's mother during the overpayment period. The agency included the petitioner's income, work, and W-2 schedules to determine the childcare overpayment amount.
5. On October 2, 2015 the agency sent the petitioner a repayment agreement stating that she still owed \$2,067.81 for this childcare overpayment.
6. The agency has not legally established that the petitioner was living with his children, and the mother of his children from January 1, 2014 through May 31, 2015. I find that the petitioner was living with his children, and their mother from June 1, 2015 through June 30, 2015.
7. On October 14, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1). The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Care Policy Manual, Chapter 3, §3.5.1.

In this case the only issue is whether the petitioner was in the home with his children and the children's mother during the overpayment period. The agency presented a letter and documents from the mother's former landlord stating that the petitioner lived there during the entire overpayment. The agency had also spoken to the landlord who had reported that the petitioner was living with his children and their mother during the overpayment period. The landlord lives in Chicago, and was not willing to testify either via telephone or in person. The landlord evicted the mother. After evicting the mother, the mother filed a fair housing complaint against the landlord. It appears that the landlord was no longer willing to have any further contact or dealings with the mother or this petitioner.

The petitioner and the mother both testified that the petitioner moved in with the mother in May of 2015. Prior to that the petitioner lived with his grandmother, and only visited his children. He moved in when the mother had employment issues and his grandmother went into a nursing home.

Although I find the petitioner and mother's testimony questionable, the landlord never testified. The problem with the agency not having the landlord testify is the law concerning the use of hearsay in an administrative hearing. The Wisconsin Supreme Court has ruled that hearsay is admissible in administrative proceedings. *Gehin v. Wisconsin Group Ins. Bd.*, 278 Wis. 2d 111, 133; see also Wis. Stat., §227.45. The Court has also ruled, however, that **administrative bodies should never base findings solely upon uncorroborated hearsay**. *Ibid.* See also *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987), and see *Outagamie County v. Town of Brooklyn*, 18 Wis. 2d 303, 312 (1962).

"Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted." Wis. Stat. §908.02(3). "A 'statement' is (a) an oral or written assertion...of a person, if it is intended by him as an assertion." Wis. Stat. §908.01(1).

Here the agency did just that. They presented a written statement and some written documentation from the landlord showing that the petitioner was living with his children and their mother during the overpayment period. Unfortunately, the petitioner is far from credible, and legally I cannot rely on the landlord's multiple hearsay statements. Although I understand the agency's predicament; the landlord was not willing to testify, and they had to go forward, legally I have no other option except to sustain the overpayment only for the month of June 2015. The petitioner and mother admit that he was in the home in June, which support the landlord's hearsay statements.

I further note that I am confused how the overpayment amount for this petitioner is less than the overpayment amount for the mother. However, because I have concluded that the petitioner was not in the home during the period of the overpayment where there was an issue with the numbers this is a moot point.

CONCLUSIONS OF LAW

The agency incorrectly concluded that the petitioner was overpaid \$2,067.81 in childcare benefits for the period from January 5, 2014 through December 31, 2014, and January 5, 2015 through February 28, 2015, and May 1, 2015 through May 31, 2015. The agency correctly established an overpayment for from June 1, 2015 to June 30, 2015.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to rescind the overpayment from January 1, 2014 through May 31, 2015. The agency shall issue a new overpayment notice for the period from June 1, 2015 to June 30, 2015. The agency has 10 days from the date of decision to comply with this order. This appeal is dismissed in all other respects.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 28, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud